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# In the Supreme Court of the United States

OCTOBER TERM, 1977

**No. 77-1446**

SOUTHERN CAPITAL CORPORATION

*Petitioner,*

VS.

SOUTHERN PACIFIC COMPANY,  
SOUTHERN PACIFIC TRANSPORTATION COMPANY,  
MORGAN GUARANTY TRUST COMPANY OF NEW YORK

*Respondents.*

On Petition for a Writ of Certiorari to  
the United States Court of Appeals  
for the Eighth Circuit

## Brief in Opposition of Respondents Southern Pacific Company and Southern Pacific Transportation Company

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**Brief in Opposition of Respondents  
Southern Pacific Company and Southern Pacific  
Transportation Company**

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Respondents SOUTHERN PACIFIC COMPANY and  
SOUTHERN PACIFIC TRANSPORTATION COM-  
PANY respectfully submit the following brief in opposi-  
tion to the Petition For a Writ of Certiorari to the United  
States Court of Appeals for the Eighth Circuit.



**OPINIONS BELOW**

The opinion of the Court of Appeals for the Eighth Circuit is reported at 568 F.2d 590 (8th Cir. 1978). The memorandum opinion of the District Court for the Eastern District of Arkansas was not reported. The courts' opinions are set forth in Appendices "A" and "B" to the Petition.

**JURISDICTION**

The judgment of the Court of Appeals for the Eighth Circuit was entered January 11, 1978. The jurisdiction of this Court was invoked under 28 U.S.C. § 1254(1) with filing of the Petition for a Writ of Certiorari on April 11, 1978.

**STATUTES INVOLVED**

Joint Resolution of June 5, 1933, ch. 48, § 1, 48 Stat. 112-13, 31 U.S.C. § 463 (App. 1).\*

Gold Reserve Act of 1934, Sections 3 and 4, 31 U.S.C. §§ 442 and 443 (repealed 1973) (App. 2).

Gold Reserve Act of 1934, Section 5, 31 U.S.C. § 315b (App. 3).

Act of Sept. 21, 1973, Section 3 ("Gold Ownership Amendment of 1973"), Pub. L. No. 93-110, 87 Stat. 352 (App. 3).

Act of Aug. 14, 1974, Section 2 ("Gold Ownership Amendment of 1974"), Pub. L. No. 93-373, 88 Stat. 445 (App. 4).

Act of Oct. 28, 1977, Section 4(c) (the "1977 Reaffirmation"), Pub. L. No. 95-147, 91 Stat. 1229 (App. 4).

(The texts of the listed statutes are set forth in the Appendix hereto).

\*"App." citations are to the Appendix hereto. "Pet. App." citations are to Petitioner's Appendix.

**QUESTIONS PRESENTED**

When the legislative history of the Gold Ownership Amendments revealed no intent to repeal the Joint Resolution, when the respective enactments were neither irreconcilable nor inconsistent, and when Congress in October 1977 enacted legislation reaffirming the Joint Resolution with respect to debt obligations issued prior to October 1977, was the Joint Resolution implicitly repealed by the Gold Ownership Amendments?

Given that the congressional power to establish a uniform monetary system upon which the constitutional validity of the Joint Resolution rested in 1933 still exists today, and that the Congress in October 1977 enacted legislation reaffirming the applicability of the Joint Resolution with respect to debt obligations issued prior to October 1977, has the Joint Resolution become violative of substantive due process under the Fifth Amendment through change of circumstances with respect to obligations previously voided by the Joint Resolution?

**STATEMENT OF THE CASE**

Petitioner's complaint seeks payment of principal and interest on Respondent Southern Pacific Transportation Company's First Mortgage Gold Bonds (the "Bonds"), which were issued on March 1, 1927 and matured on March 1, 1977, pursuant to a gold clause contained in the Bonds providing for such payment "in gold coin of the United States of America of or equal to the standard of weight and fineness existing on March 1, 1927."

Such gold payment clauses, which were widespread at the time of issuance of the Bonds, were declared to be void and against public policy by the Joint Resolution of June 5, 1933, 31 U.S.C. § 463, ch. 48, § 1, 48 Stat. 112-13 (the "Joint Resolution") (App. 1), which provides that:

"Every obligation, heretofore or hereafter incurred, . . . shall be discharged upon payment, dollar for dollar, in any coin or currency which at the time of payment is legal tender for public and private debts."

The constitutional validity of the Joint Resolution was first upheld by this Court in *Norman v. Baltimore & O.R.R.*, 294 U.S. 240 (1935), in which a gold clause identical to that contained in the Bonds in question here was declared unenforceable. The constitutionality of the Joint Resolution was subsequently reaffirmed in several other cases reaching this Court in the 1930's. See, e.g., *Guaranty Trust Co. v. Henwood*, 307 U.S. 247 (1939); *Bethlehem Steel Co. v. Zurich General Accident & Liability Co.*, 307 U.S. 265 (1939); *Holyoke Water Power Co. v. American Writing Paper Co.*, 300 U.S. 324 (1937); *Nortz v. United States*, 294 U.S. 317 (1935); *Emery Bird Thayer Dry Goods Co. v. Williams*, 107 F.2d 965 (8th Cir. 1939), *cert. denied*, 309 U.S. 655 (1940).

Petitioner argued before the District Court that the Joint Resolution (1) had been repealed, either explicitly or implicitly, by legislation enacted in 1974 intended to eliminate existing limitations on the right of United States citizens to purchase, hold, sell or otherwise deal in gold; Act of Sept. 21, 1973, sec. 3, Pub. L. No. 93-110, 87 Stat. 352; Act of Aug. 14, 1974, sec. 2, Pub. L. No. 93-373, 88 Stat. 445 (the "Gold Ownership Amendments") (App. 3); or (2) was no longer constitutional because the economic circumstances giving rise to its passage no longer prevailed.

In granting Southern Pacific's motion to dismiss the complaint, the United States District Court for the Eastern District of Arkansas, Western Division, Garnett T. Eisele, U.S.D.J., relying on *Feldman v. Great Northern Ry.*, 428 F.Supp. 979, 984-87 (S.D. N.Y. 1977), and *Equitable Life Assurance Society v. Grosvenor*, 426 F.Supp. 67, 71-72

(W.D. Tenn. 1976), *appeal docketed*, No. 77-1002 (6th Cir. Jan. 7, 1977), two cases upholding the continuing validity of the Joint Resolution, held that "the 1974 Act did not repeal the Joint Resolution of 1933", and further concluded that

"an independent constitutional basis for the Resolution [cited by Congress], Congress' power to establish a uniform monetary system with parity between all forms of currency . . . is as valid today as in 1933." (Pet. App. 16).

*Henderson v. Mann Theatres Corp.*, 65 Cal.App.3d 397, 135 Cal.Rptr. 266 (1976), *cert. denied*, 46 U.S.L.W. 3215 (Oct. 3, 1977); *Equitable Life Assurance Society v. Grosvenor*, 426 F.Supp. 67, 72-73 (W.D. Tenn. 1976), *appeal docketed*, No. 77-1002 (6th Cir. Jan. 7, 1977); Cf. *Aztec Properties, Inc. v. Union Planters National Bank*, 530 S.W.2d 756 (Tenn. 1975), *cert. denied*, 425 U.S. 975 (1976).

Judge Eisele's decision was unanimously affirmed by the United States Court of Appeals for the Eighth Circuit in an opinion written by Circuit Judge Stephenson and joined in by Senior Circuit Judge Van Oosterhout and Circuit Judge Lay. *Southern Capital Corp. v. Southern Pacific Company*, 568 F.2d 590 (8th Cir. 1978). In rejecting Petitioner's argument attacking the continued constitutional viability of the Joint Resolution, the Court of Appeals held that

"the congressional power to establish a uniform monetary system which existed in 1933 and provided a basis upon which the Supreme Court upheld the constitutionality of the Joint Resolution in 1934 still exists today." (Pet. App. 20).

With respect to the argument that the Joint Resolution had been repealed, either explicitly or implicitly, the Court of Appeals first found no explicit indication of a congressional intent to repeal the Joint Resolution, and second found that the respective enactments were neither irreconcilable nor

inconsistent. (Pet. App. 22-23). Finally, the Court of Appeals concluded that the enactment of the Act of October 28, 1977, sec. 4(c), Pub. L. No. 95-147, 91 Stat. 1229 (the "1977 Reaffirmation") (App. 4), was further evidence that Congress had not intended to repeal the Joint Resolution by some earlier legislation. The 1977 Reaffirmation provides that

"The joint resolution entitled 'joint resolution to assure uniform value to the coins and currencies of the United States', approved June 5, 1933 (31 U.S.C. 463), shall not apply to obligations issued on or after the date of enactment of this section."

The Court of Appeals stated in this regard that

"If Congress had earlier intended to implicitly repeal the Joint Resolution, it is highly doubtful that the Act of October 28, 1977, would have been necessary. Additionally, this recent Act clearly expresses the congressional intent to make the Joint Resolution nonapplicable to obligations issued *on or after* October 28, 1977. We are unable to find an earlier congressional intention to repeal the Joint Resolution." (Pet. App. 22).

Respondent Southern Pacific submits that the District Court and the Court of Appeals rightly rejected the arguments advanced below by petitioners. There is no basis to justify review by the Court.

#### REASONS FOR DENYING CERTIORARI

##### I. There Is No Conflict Among the Courts, Federal and State, as to the Continued Validity of the Joint Resolution Nor Are There Any Other Grounds Warranting Review by This Court.

This case raises no new constitutional or other question of major importance, there is no conflict in the decisions of the federal and state courts with respect to any issue presented herein, and the decision of the Eighth Circuit Court of Appeals below, affirming the decision of the

District Court, is correct. Therefore, there is nothing to warrant review by this Court.

Since the enactment of the Gold Ownership Amendments, every federal and state court to consider the questions, without exception, has held that the Joint Resolution was and remains a constitutional exercise of Congress' exclusive power to issue and regulate the value of money granted in Paragraph 5 of Section 8, Article I of the United States Constitution, and that the Joint Resolution was not repealed by the Gold Ownership Amendments, which legalized the ownership of gold. *Henderson v. Mann Theatres Corp.*, 65 Cal.App.3d 397, 135 Cal.Rptr. 266 (1976), *cert. denied*, 46 U.S.L.W. 3215 (Oct. 3, 1977); *Feldman v. Great Northern Ry.*, 428 F.Supp. 979 (S.D. N.Y.); *Equitable Life Assurance Society v. Grosvenor*, 426 F.Supp. 67 (W.D. Tenn. 1976), *appeal docketed*, No. 77-1002 (6th Cir. Jan. 7, 1977); and *Radue v. Zanaty*, 293 Ala. 585, 308 So.2d 242 (1975). Indeed, this Court recently has refused to review these issues. *See Henderson v. Mann Theatres Corp.*, 46 U.S.L.W. 3215 (Oct. 3 1977), *denying cert. to* 65 Cal.App.3d 397, 135 Cal. Rptr. 266 (1976); *Cf. Aztec Properties, Inc. v. Union Planters National Bank*, 425 U.S. 975 (1976), *denying cert. to* 530 S.W.2d 756 (Tenn. 1975).

##### II. The Courts Below Correctly Decided That the Gold Ownership Amendments Did Not Repeal the Joint Resolution and That Application of the Joint Resolution to Southern Pacific's Bonds Does Not Violate Petitioner's Fifth Amendment Rights.

###### A. THE GOLD OWNERSHIP AMENDMENTS DID NOT EXPRESSLY OR IMPLIEDLY REPEAL THE JOINT RESOLUTION.

The Gold Ownership Amendments made it lawful for United States citizens again to own gold. Subsection (a) of the Gold Ownership Amendments repealed<sup>1</sup> Sections 3 and 4 of the Gold Reserve Act of 1934, 31 U.S.C. §§ 442 and



443 (App. 2), which had, respectively, empowered the Secretary of the Treasury to issue regulations prescribing the limited conditions under which gold could then be acquired, held and used (*e.g.*, for mining operations and industrial, professional and artistic uses), and provided penalties for violation of such regulations. Subsection (b) of the Gold Ownership Amendments provides, in relevant part, that “[n]o provision of any law . . . may be construed to prohibit any person from purchasing, holding, selling, or otherwise dealing with gold.”

There is simply no language in the Gold Ownership Amendments that the Joint Resolution was repealed. It was so held in *Equitable Life Assurance Society v. Grosvenor*, 426 F.Supp. 67, 71 (W.D. Tenn. 1976), *appeal docketed*, No. 77-1002 (6th Cir. Jan. 7, 1977). The only express repealer therein was of Sections 3 and 4 of the Gold Reserve Act, which dealt only with the acquisition and use of gold. The Joint Resolution was not mentioned in either Gold Ownership Amendment. Congress’ silence in the Gold Ownership Amendments with respect to the Joint Resolution cannot be construed as an intention to repeal the Joint Resolution. A recognized rule of statutory construction is that the expression of certain things in a statute necessarily involves

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1. Repeal of Sections 3 and 4 of the Gold Reserve Act was accomplished in two steps by the Gold Ownership Amendments. Subsection (a) of the Gold Ownership Amendment of 1973 provided for such repeal, and subsection (b) for elimination of existing gold ownership prohibitions upon a finding by the President that the United States’ international monetary position would not be adversely affected. The Gold Ownership Amendment of 1974 amended the Gold Ownership Amendment of 1973 by eliminating the gold ownership prohibitions on December 31, 1974, unless the President should have recommended such elimination prior to that date.

exclusion of other things not expressed—*i.e.*, *expressio unius est exclusio alterius*. See, *e.g.*, *Henderson v. Mann Theatres Corp.*, 65 Cal.App.3d 397, 135 Cal.Rptr. 266 (1976), *cert. denied*, 46 U.S.L.W. 3215 (Oct. 3, 1977).

Not only was there no express repeal, the Gold Ownership Amendments did not repeal the Joint Resolution by implication. Petitioner contends that the language in the Gold Ownership Amendments permitting U. S. citizens otherwise to deal with gold was intended by Congress to extend to all matters relating to gold, including its prohibited use as an index of monetary value. (Petition 7-8). This argument was flatly rejected in the courts below and in *Equitable Life Assurance Society v. Grosvenor*, 426 F.Supp. 67, 72 (W.D. Tenn. 1976), *appeal docketed*, No. 77-1002 (6th Cir. Jan. 7, 1977).

Petitioner’s argument is in direct conflict with the many rulings of this Court that repeals by implication are not favored. See, *e.g.*, *Morton v. Mancari*, 417 U.S. 535, 549 (1974) and the cases cited therein. This Court’s decision in *Morton* reaffirms the alternative requirements for implied repeal of an earlier statute by a later one—*viz.*, (1) there must be an affirmative showing of a “clear and manifest intent” by Congress to repeal the earlier statute, or (2) the earlier and later statutes must be irreconcilable. Absent such intention and where the two statutes “are capable of co-existence,” the courts must regard each as effective. *Morton, supra*, at 551. Petitioner has failed to demonstrate that either requirement has been satisfied, and is unable to do so.

As to the first requirement, there is nothing in the language of the Gold Ownership Amendments themselves, or in the legislative history of those enactments, that indi-

cates affirmatively any Congressional intent to repeal the Joint Resolution. Indeed, all the available legislative history of the Gold Ownership Amendments mandates a contrary conclusion.

The testimony of the Chairman of the International Finance Subcommittee of the House Committee on Banking and Currency, which handled the Amendments, supports this conclusion:

"I want to emphasize that this would not mean that we intend to allow the writing of contracts in gold, or otherwise change the joint resolution on gold. Our intention is merely to allow individuals to buy, sell and own gold if and when it is possible to do this without sacrificing our national interest." 119 CONG. REC. 16,968 (1973).

Moreover, high officials of federal executive departments and independent agencies charged with monetary and banking administration have uniformly interpreted the Gold Ownership Amendments as not repealing or modifying the Joint Resolution. *See* Secretary of the Treasury's Statement of December 9, 1974, 122 CONG. REC. S. 9128 (daily ed. June 14, 1976)<sup>2</sup>; Statements of the Board of Governors of the Federal Reserve Board, and the Comptroller of the Currency; and Statements of the Federal Deposit Insurance Corporation and Federal Home Loan Bank Board, 4

2. On December 4, 1974, just a short time before the Gold Ownership Amendments became effective, Secretary of the Treasury William Simon testified before the House International Finance Subcommittee:

"Contracts payable alternatively in gold or in an amount of money measured thereby are both against public policy and unenforceable in our courts under the provisions of the Congressional Gold Clause Joint Resolution of 1933. *This clause continues to apply after the lifting of restrictions on bullion ownership.*" *Hearings on H.R. 17475 Before the Subcomm. on International Finance of the House Comm. on Banking and Currency*, 93d Cong., 2d Sess. 7 (1974). (Emphasis supplied.)

CCH FED. BANKING L. REP. ¶ 56,368 at 35,221-27 (1974). As a rule of statutory construction, these interpretations of the Gold Ownership Amendments are entitled to be given great weight by the courts. *Broadrick v. Oklahoma*, 413 U.S. 601, 617-618 (1973); *Udall v. Tallman*, 380 U.S. 1, 16 (1965).

As to the alternative requirement for implied repeal, the Joint Resolution and the Gold Ownership Amendments are not in conflict with each other and may be harmoniously construed. In enacting the Gold Ownership Amendments, Congress intended only to remove restrictions upon U. S. citizens in "purchasing, holding, selling or otherwise dealing in gold" as a commodity—i.e., to eliminate the restrictions on the use of gold as a commodity and to permit its acquisition for investment and speculative purposes. In enacting the Joint Resolution, Congress focused on the specific problems posed by the use of "gold clauses" in debt obligations and other contracts, and intended, by demonetizing gold, to eliminate the interference of such provisions with its constitutional power to regulate the value of money. *Norman v. Baltimore & O.R.R.*, 294 U.S. 240 (1935). It is evident, then, that the Gold Ownership Amendments and the Joint Resolution deal with quite diverse subjects. Petitioner has failed to cite, nor can it cite, any authority to demonstrate that the Gold Ownership Amendments were intended to give gold a renewed monetary standing. The language of the Gold Ownership Amendment of 1974 itself clearly manifests this distinction between private ownership of gold and the monetary role of gold.<sup>3</sup>

3. "(c) . . . [T]his section shall take effect on December 31, 1974, or at any time prior . . . that international monetary reform shall have proceeded to the point where elimination of regulations on private ownership of gold will not adversely affect the United States' international monetary position."



This distinction is further manifested by the words used to describe the categories of permitted activity under subsection (b) of the Gold Ownership Amendments—i.e., “purchasing”, “holding”, “selling”, and “or otherwise dealing.” These are the words which describe acts of trading in a commodity,<sup>4</sup> and its acquisition, ownership and disposition. They plainly have no relationship to the use of gold as an index of value to measure monetary obligations.

The Court recognized this distinction between gold as a commodity and gold as an index of value in the cases decided in the 1930's upholding the constitutionality of the Joint Resolution. In *Holyoke Water Power Co. v. American Writing Paper Co.*, 300 U.S. 324 (1937), this Court flatly rejected the contention that a gold value clause in a lease was in effect a contract for the purchase and sale of gold, even though the clause used the term “commodity”. In affirming the judgment of the courts below that the lessee was obligated to pay rent, dollar for dollar, in the then prevailing currency and not in gold, this Court held that “[t]he obligation was one for the payment of money, and not for the delivery of gold as upon the sale of a commodity.” 300 U.S. at 335.

The lower courts herein and all other courts which have considered the question of implied repeal of the Joint Resolution by the Gold Ownership Amendments have held that there is no basic inconsistency, or positive repugnancy, in permitting the general range of activities inci-

4. These words in subsection (b), denoting the commodity status of gold, are further given meaning by reference to the panoply of activities prohibited under Section 3 of the Gold Reserve Act, 31 U.S.C. § 442, and the Treasury regulations implementing that statute [31 C.F.R. §§ 54.1-54.83 (1974)], now permitted under the Gold Ownership Amendments, such as import, export, melt, treat, transport, store, process, fabricate, earmark, etc. See *Feldman v. Great Northern Ry.*, 428 F.Supp. 979, 986 (S.D. N.Y. 1977).

dent to ownership of gold as a commodity under the Gold Ownership Amendments, while denying by the Joint Resolution the right to enforce payment of obligations indexed to the value of gold. See, e.g., *Feldman v. Great Northern Ry.*, 428 F.Supp. 979, 984 (S.D. N.Y. 1977); *Equitable Life Assurance Society v. Grosvenor*, 426 F. Supp. 67, 72 (W.D. Tenn. 1976), *appeal docketed*, No. 77-1002 (6th Cir. Jan. 7, 1977); and *Henderson v. Mann Theatres Corp.*, 65 Cal.App.3d 397, 404-405, 135 Cal.Rptr. 266 (1976), *cert. denied*, 46 U.S.L.W. 3215 (Oct. 3, 1977). In reaching this conclusion, the district court in *Feldman* applied the rule of statutory construction recently reaffirmed by the Supreme Court in *Radzanower v. Touche Ross & Co.*, 426 U.S. 148, 153 (1976)—i.e., that “a statute dealing with a narrow, precise, and specific subject is not submerged by a later enacted statute covering a more generalized spectrum.” The court in *Feldman* found that the general permission granted by the Gold Ownership Amendments in dealing with gold as commodity did not undercut or submerge the specific prohibition of the Joint Resolution. 428 F.Supp. at 984-985.

The 1977 Reaffirmation makes the Joint Resolution inapplicable to obligations issued on or after October 28, 1977 and, in effect, reaffirms the Joint Resolution with respect to obligations issued prior to that date. The Joint Resolution continues, therefore, to invalidate gold clause obligations issued prior to October 28, 1977, including the gold clause obligation in Southern Pacific's Bonds. Moreover, Congress' enactment of the 1977 Reaffirmation is persuasive evidence that the Gold Ownership Amendments did not repeal the Joint Resolution by implication. The Eighth Circuit Court of Appeals correctly concluded that, “[i]f Congress had earlier intended to implicitly repeal the Joint Resolution [i.e., by the Gold Ownership Amendments],

it is highly doubtful that the Act of October 28, 1977, would have been necessary." (Pet. App. 22). It is clear, therefore, that the courts below correctly decided that the Gold Ownership Amendments did not expressly or impliedly repeal the Joint Resolution.

**B. PETITIONER'S SUBSTANTIVE DUE PROCESS RIGHTS ARE NOT VIOLATED BY APPLICATION OF THE JOINT RESOLUTION TO SOUTHERN PACIFIC'S BONDS.**

Application of the Joint Resolution to the gold clause in Southern Pacific's Bonds issued in 1927 does not violate Petitioner's Fifth Amendment substantive due process rights. The Joint Resolution was found constitutional in 1935 (*Norman v. Baltimore & O.R.R.*, 294 U.S. 240 (1935)) and it continues today to meet substantive due process standards.<sup>5</sup>

The Joint Resolution was an exercise of Congress' express power, granted in Paragraph 5 of Section 8, Article I of the United States Constitution, to "coin money, regulate the value thereof, and of foreign coin". *Norman, supra*, at 302-306. This power resides exclusively with Congress and the wisdom of monetary measures is a political, not judicial, question. *Julliard v. Greenman*, 110 U.S. 421 (1884). Even though the 1933 Joint Resolution invalidated the gold clauses in then-existing contracts, it met the only constitutional requirement for a monetary measure to be valid: it was rationally related to a proper purpose and not arbitrary or capricious. *Norman, supra*, at 311.

The Joint Resolution has not lost its validity merely because time has passed, whether or not economic conditions have changed. Petitioner has the burden of showing that no reasonable state of facts can be conceived which supports its

5. It should be noted that Petitioner's due process arguments proceed on a basis discredited by this Court at least since its decision in *United States v. Carolene Products Co.*, 304 U.S. 144, 152 (1938).

continued application. *Cf. Kelley v. Johnson*, 425 U.S. 238 (1976). Modern courts do not invalidate legislation simply because some think it unwise or because there might be a more reasonable means to the end sought. *Cf. Williamson v. Lee Optical*, 348 U.S. 483, 488 (1955). Petitioner must demonstrate that there is no monetary or other Congressional policy to which continued application of the Joint Resolution vis-a-vis pre-1933 obligations bears a rational relation. *United States v. Carolene Products Co.*, 304 U.S. 144, 152 (1938). Petitioner has not met and cannot meet this burden. Indeed, the 1977 Reaffirmation constitutes an express finding by Congress that the Joint Resolution was not to be retroactively repealed. In order to grant Petitioner the relief it seeks, the 1977 Reaffirmation would have to be invalidated as well.

Similarly, Petitioner's argument that the Joint Resolution must fall before the "equal protection requirements of the Fifth Amendment" (Petition 2) is without merit. Congress' paramount monetary power permits it to adopt statutory schemes which may seem unfair to some. *Holyoke Water Power Co. v. American Writing Paper Co.*, 300 U.S. 324 (1936). Where legislation involves a national interest, as does the Joint Resolution, Congress may be justified in discriminating in a way which would be unacceptable if imposed by a state. *Hampton v. Mow Sun Wong*, 426 U.S. 88, 100 (1976). However, even if the Joint Resolution were subjected to equal protection analysis it would be found valid: the Joint Resolution does not discriminate against a suspect class, does not infringe a fundamental right, and is not arbitrary or capricious. It fully satisfies the equal protection tests set forth in *New Orleans v. Dukes*, 427 U.S. 297, 303 (1976). Petitioner has not demonstrated, and cannot, that the classifications effected by the Joint Resolution are not rationally related to a legitimate purpose. Therefore, it



is clear that the courts below correctly decided that Petitioner's substantive due process rights are not violated by application of the Joint Resolution to Southern Pacific's Bonds.

**III. Petitioner's Suit Seeks Relief Which Respondents Are Unable to Provide Under Existing Law.**

In its complaint filed in the District Court, Petitioner seeks a declaratory judgment that Respondents are obligated to satisfy the remaining payments of principal and interest on the Bonds issued by Southern Pacific Company on March 1, 1927 "in gold coin of the United States of America of or equal to the standard of weight and fineness existing on March 1, 1927." However, by virtue of the operation of Section 5 of the Gold Reserve Act of 1934, 31 U.S.C. § 315b (App. 3), there has been no "gold coin of the United States" in circulation since January 30, 1934. Unlike other provisions of the Gold Reserve Act which have been repealed, Section 5 remains in effect and precludes the use of gold coin as legal tender in the settlement of monetary obligations. Thus, it would be impossible for Respondents to comply with the declaratory judgment sought in Petitioner's complaint.

. . .

**CONCLUSION**

As the courts below correctly decided, the Gold Ownership Amendments did not repeal the Joint Resolution and Petitioner's Fifth Amendment rights are not violated by application of the Joint Resolution to the gold clause in

Southern Pacific's Bonds. The Petition for a Writ of Certiorari should, therefore, be denied.

DATED: May 4, 1978

Respectfully submitted,

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**(Appendix follows)**

# APPENDIX

## *Appendix*

JOINT RESOLUTION OF June 5, 1933, ch. 48, § 1,  
48 Stat. 112-13, 31 U.S.C. § 463

To assure uniform value to the coins and currencies of the United States.

Whereas the holding of or dealing in gold affect the public interest, and are therefore subject to proper regulation and restriction; and

Whereas the existing emergency has disclosed that provisions of obligations which purport to give the obligee a right to require payment in gold or a particular kind of coin or currency of the United States, or in an amount in money of the United States measured thereby, obstruct the power of the Congress to regulate the value of the money of the United States, and are inconsistent with the declared policy of the Congress to maintain at all times the equal power of every dollar, coined or issued by the United States, in the markets and in the payment of debts. Now, therefore, be it

*Resolved by the Senate and House of Representatives of the United States of America in Congress assembled, That* (a) every provision contained in or made with respect to any obligation which purports to give the obligee a right to require payment in gold or a particular kind of coin or currency, or in an amount in money of the United States measured thereby, is declared to be against public policy; and no such provision shall be contained in or made with respect to any obligation hereafter incurred. Every obligation, heretofore or hereafter incurred, whether or not any such provision is contained therein or made with respect thereto, shall be discharged upon payment, dollar for dollar, in any coin or currency which at the time of payment is legal tender for public and private debts. Any such

provision contained in any law authorizing obligations to be issued by or under authority of the United States, is hereby repealed, but the repeal of any such provision shall not invalidate any other provision or authority contained in such law.

(b) As used in this resolution, the term "obligation" means an obligation (including every obligation of and to the United States, excepting currency) payable in money of the United States; and the term "coin or currency" means coin or currency of the United States, including Federal Reserve notes and circulating notes of Federal Reserve banks and national banking associations.

GOLD RESERVE ACT OF 1934, Secs. 3 and 4, ch. 6,  
 §§ 3-4, 48 Stat. 337-38, 31 U.S.C.  
 §§ 442, 443 (repealed)

SEC. 3. The Secretary of the Treasury shall, by regulations issued hereunder, with the approval of the President, prescribe the conditions under which gold may be acquired and held, transported, melted or treated, imported, exported, or earmarked: (a) for industrial, professional, and artistic use; (b) by the Federal Reserve banks for the purpose of settling international balances; and, (c) for such other purposes as in his judgment are not inconsistent with the purposes of this Act. Gold in any form may be acquired, transported, melted or treated, imported, exported, or earmarked or held in custody for foreign or domestic account (except on behalf of the United States) only to the extent permitted by, and subject to the conditions prescribed in, or pursuant to, such regulations. Such regulations may exempt from the provisions of this section, in whole or in part, gold situated in the Philippine Islands or other places beyond the limits of the continental United States.

SEC. 4. Any gold withheld, acquired, transported, melted or treated, imported, exported, or earmarked or held in custody, in violation of this Act or of any regulations issued hereunder, or licenses issued pursuant thereto, shall be forfeited to the United States, and may be seized and condemned by like proceedings as those provided by law for the forfeiture, seizure, and condemnation of property imported into the United States contrary to law; and in addition any person failing to comply with the provisions of this Act or of any such regulations or licenses, shall be subject to a penalty equal to twice the value of the gold in respect of which such failure occurred.

GOLD RESERVE ACT OF 1934, Sec. 5, 31 U.S.C.  
 § 315b, ch. 6, § 5, 48 Stat. 340

No gold shall after January 30, 1934, be coined, and no gold coin shall after January 30, 1934, be paid out or delivered by the United States: *Provided, however,* That coinage may continue to be executed by the mints of the United States for foreign countries in accordance with section 367 of this title. All gold coin of the United States shall be withdrawn from circulation, and, together with all other gold owned by the United States, shall be formed into bars of such weights and degrees of fineness as the Secretary of the Treasury may direct.

ACT OF SEPT. 21, 1973, Sec. 3, Pub. L. No. 93-110,  
 87 Stat. 352 ("Gold Ownership Amendment of 1973")

Sec. 3. (a) Sections 3 and 4 of the Gold Reserve Act of 1934 (31 U.S.C. 442 and 443) are repealed.

(b) No provision of any law in effect on the date of enactment of this Act, and no rule, regulation, or order under authority of any such law, may be construed to prohibit

any person from purchasing, holding, selling, or otherwise dealing with gold.

(c) The provisions of this section, pertaining to gold, shall take effect when the President finds and reports to the Congress that international monetary reform shall have proceeded to the point where elimination of regulations on private ownership of gold will not adversely affect the United States' international monetary position.

ACT OF AUG. 14, 1974, Sec. 2, Pub. L. No. 93-373,  
88 Stat. 445 ("Gold Ownership Amendment of 1974")

Sec. 2. Subsections 3(b) and (c) of Public Law 93-110 (87 Stat. 352) are repealed and in lieu thereof add the following:

"(b) No provision of any law in effect on the date of enactment of this Act, and no rule, regulation, or order in effect on the date subsections (a) and (b) become effective may be construed to prohibit any person from purchasing, holding, selling, or otherwise dealing with gold in the United States or abroad.

"(c) The provisions of subsections (a) and (b) of this section shall take effect either on December 31, 1974, or at any time prior to such date that the President finds and reports to Congress that international monetary reform shall have proceeded to the point where elimination of regulations on private ownership of gold will not adversely affect the United States' international monetary position."

ACT OF OCT. 28, 1977, Sec. 4(c), Pub. L. 95-147,  
91 Stat. 1229 (the "1977 Reaffirmation")

The joint resolution entitled "joint resolution to assure uniform value to the coins and currencies of the United States", approved June 5, 1933 (31 U.S.C. 463), shall not apply to obligations issued on or after the date of enactment of this section.